

# Legal services

For people recovering from critical illness

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When you're a ICU patient or a family member of a patient recovering from critical illness you can encounter unique legal needs that many people won't ever experience. Following critical illness patients can struggle with physical, psychological or cognitive problems that can make dealing with legal issues very difficult. Navigating through legal processes can be daunting and confusing, and it can be difficult to know where to turn when you think you might need specialist legal advice.



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In this brochure, we discuss some common legal needs that recovering ICU patients and their families encounter and explain what to do in a number of unique circumstances. If you require tailored legal advice on any of the issues discussed, don't hesitate to reach out to a specialist qualified solicitor.

## Wills, trust, tax and probate

When it comes to naming a disabled loved one as a beneficiary in your will, or making a will after receiving a significant injury settlement, you should always speak to a specialist wills and trusts lawyer as soon as possible.

Many ICU patients receive benefits or means tested entitlements, and some may even struggle handling their own affairs and money. Working with a specialist allows you to make informed decisions and know how best to prepare your estate for your loved ones.

### Specialist legal advice for complex wills

For those with complicated family situations, complex requests, or significant assets, making a will can require specialist legal advice. A homemade will, or one drafted using a free will service, can be insufficient. These documents often use incorrect terminology and fail to properly address the intricacies of particular will clauses. When this happens, the will is at risk of being declared invalid due to ambiguity or other problems.

If you're living with a disability, or have a disabled loved one who you're planning to include as a beneficiary in your will, then it's always best to seek legal advice from an expert solicitor specialising in complex wills. These experts prepare complex wills with highly complicated personal and tax-saving provisions like these every day, and will offer you a personal, tailored will writing service to ensure every aspect of your estate is considered in full.

Failing to do so could leave your

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*“Receiving money in an unprotected way can be detrimental for those who receive means-tested entitlements.”*

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loved ones both financially vulnerable, and unable to utilise the full benefit of their inheritance and assets that you intended for them to receive after you're gone.

Receiving money in an unprotected way can be detrimental for those who receive means-tested entitlements and can leave beneficiaries ineligible for the long-term benefits that they financially rely on.

## Using a trust in a will to leave money to a disabled loved one

No one wants to consider a time where they are no longer around, and this is certainly true when you are the parent of a disabled child or have a disabled loved one. Leaving money and assets to a disabled relative is one way to ensure that they have the means to take care of themselves, or to seek the help and assistance they might need after you've gone.

There's a lot to consider when it comes to leaving money to a disabled relative in your will, in order to ensure that they receive the financial support and protection intended, whilst protecting their entitlement to any benefits they receive. These benefits can put people living with disabilities in a unique position whereby receiving too much money would make them ineligible for benefits they rely on, such as working tax credits.

A solution to this would be using the protective measures of a trust to leave money in your will. When setting up a trust you can leave money for someone with a disability without them having to worry about the responsibility of looking after it in their lifetime. You can choose between two and four people as appointed trustees to manage the money left to your disabled child or loved one.

Choosing your appointed trustees is an important decision, and one that you should take great care over. While there's no obligation to do so, it's always best to ask friends and family members if they're willing and happy to act in this role before choosing them as a trustee.

Acting as a trustee is a big role, which comes with several responsibilities. These include:

- Ensuring that you fully understand the terms and conditions of the trust deed

- Acting in the trustee's best interests
- Not paying yourself any fees or expenses (unless explicitly stated in the trust deed)
- Fulfilling your fiduciary and statutory duties (fulfilling your legal obligations in the best interests of others)
- Keeping accounts of all funds in the trust
- Providing information about the trust to named beneficiaries
- Ensuring that you always keep up to date with any changes in tax rules and trust laws

With many trustees having no financial expertise, the role can be a daunting task. For friends and family members who don't want to go it alone through the process, they can appoint a professional to help and guide them. At Slater and Gordon, our solicitors are specialists in trusts and are here to answer any questions you have about trustee responsibility. Our experts regularly work with clients who've been appointed as a trustee by family member or friend, and we work closely with them to ensure everything is handled correctly, and the process is stress-free.

Alternatively, if you're looking to set up a trust and are unsure of who to appoint as a trustee, then you could benefit from a professional trustee. Choosing to work with a professional trustee can reduce the responsibility placed onto family members and prevent any potential conflicts or disputes between loved ones.

When you choose to work with a professional trustee you can rest assured that your trust will be handled with confidentiality, impartiality, and the experience and knowledge of a qualified expert.

## Types of trusts

There are several different types of trusts available, each with slightly different terms and benefits.

Deciding which trust is the right one for you and setting it up can be quite complex, and this is one of the reasons it's always best to work with a specialist trust law solicitor.

Some of the most beneficial types of trusts for disabled loved ones include:

- Compensation protection trusts- If you've suffered a personal injury and received compensation, this trust can protect your compensation without restricting your access to the fund
- Life interest trusts- Money, investments, or a share of a property can be placed into a life interest trust so that it isn't taken into account should someone's financial situation be assessed, e.g. when they require care (any income from investments is paid to the beneficiary)
- Disabled person's trusts- Under a disabled person's trust, a disabled child can be named as the 'primary beneficiary' of the assets in a trust, with other children or beneficiaries named in a separate class of beneficiaries. The primary beneficiary will be entitled to the income of the trust without it affecting their entitlement to state benefits

The importance of working with a specialist trust law solicitor

When setting up a trust of any kind, you should always work with a solicitor specialising in trust law.

When you do, they can offer specialist help and advice with the following:

- Which type of trust is best for you?
- What assets should you include in the trust?
- Ensuring trust is set up in a tax-efficient way and managed compliantly
- Making sure that your trust and will don't conflict in any way

## Lasting Powers of Attorney services

Under the Mental Capacity Act 2005, those with capacity to do so can appoint a Lasting Power of Attorney (LPA) to make decisions on their behalf should they lose the mental capacity to do so in the future. This is especially important for those living with a disability that has the potential to impact their memory or cognitive function. Legally, your family members don't automatically have the right to take on this responsibility on your behalf, so you'll need to appoint someone using a formal power of attorney document.

There are two types of lasting power of attorney, the first is property and financial

affairs and the second is health and welfare. The property and financial affairs lasting power of attorney allows the person you nominate to make decisions on your behalf about things like:

- money, tax and bills
- bank and building society accounts
- property and investments
- pensions and benefits

The health and welfare lasting power of attorney allows the person you nominate to make decisions about things like:

- daily routine, for example washing, dressing and eating
- medical care
- where the donor lives

If you're looking at setting up an LPA, it's crucial to do so while you still have capacity. This will enable you to choose people you trust to make decisions on your behalf and decide which decisions they're allowed to make. The person/people that you choose to appoint are called your attorney(s).

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The right answers aren't always available online, especially those that are suited to your specific circumstances. To avoid errors and to ensure you receive the most accurate information, it's best to seek legal advice before making a decision from a specialist lasting power of attorney

solicitor. Lawyers at companies, such as Slater and Gordon, work with clients every day to set up a valid LPA, and can help you further understand what responsibilities and conditions come with appointing an attorney.

It is possible to complete and register a lasting power of attorney (LPA) online or using downloadable paper forms. As part of this you will need to get other people to sign the forms, including the nominated attorneys and two witnesses. You can get someone else to use the online service or fill in the paper forms for you, for example a family member, friend or a solicitor. The website to use to access this is <https://www.gov.uk/power-of-attorney/make-lasting-power>.

You must register your LPA (see <https://www.gov.uk/power-of-attorney/register>) or your nominated attorney(s) will not be able to make decisions for you. It takes up to 20 weeks to make an LPA if there are no mistakes in the application. It's usually quicker if you make it and pay online.

If you do not feel up to completing the form, even with someone's help, then a solicitor can do this for you.

## Court of protection legal services

The Court of Protection exists to look after the best interests of those who lack the mental capacity to make certain decisions for themselves. The court has the power to decide what actions to take including the appointment of deputies to act on the individual's behalf.

If a family member or loved one loses capacity due to an accident, negligence, or a degenerative illness, you or a professional can be appointed as a deputy if no lasting power of attorney is in place. To do so, an application will need to be made to the Court of Protection. This process can be made significantly easier with the help of a specialist solicitor to assist you with the process.

## What's a Professional Deputy?

If someone becomes mentally incapable of handling their welfare and/or their property and financial affairs, and a lasting power of attorney isn't already in place, someone else must be appointed to manage these affairs in their best interest. This appointed person is known as a deputy, and can either be a close relative or friend of the person who needs help making decision, or a professionally appointed deputy.

Deputyship is a huge undertaking, which can involve a great deal of time and work. In most complex cases involving a large sum of money, the court will insist that a professional deputy's appointed to handle the affairs of the deceased. This is someone whose profession it is

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to regularly act as lay deputy, and is usually a lawyer with specialist expertise in Court of Protection law.

## Deputyship responsibilities

When acting on behalf of a person who lacks mental capacity, a Professional Deputy's responsibilities typically include:

- Completing tax returns for the client
- Investing and budgeting the client's money to ensure that any compensation the client has received will last
- Ensuring the continued access to the relevant state benefits
- Ensuring the client has claimed for these benefits appropriately
- Arranging the timely transferring of any payments, including care costs
- Employing a care team or individual for the client, depending on their needs, and dealing with employment law issues that arise
- Considering the will of a client and making any gifts
- Supporting and advising the family of the client to ensure that their wishes are known and considered
- Buying, selling, or arranging for the adaptation of property on behalf of the client

Whether you wish to be appointed as a deputy for a loved one, or talk to a specialist solicitor about the benefits of professional deputyship, it's always best to reach out to a Court of Protection expert lawyer as soon as possible to learn more about the process.

## Statutory wills and gift applications for those who lack mental capacity

Making a will is an important step for everyone. However, to make a will someone must have the required mental capacity to do so, otherwise the will could be challenged and deemed invalid.

A person who lacks mental capacity is therefore unable to make a will on their own behalf. A specialist solicitor will help to set up an assessment to check that the client can make choices about their will for themselves. In the event that they can't and need help an application can be made to the Court of Protection to for a

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will to be prepared on their behalf, this is known as a statutory will.

Someone who lacks mental capacity may also be unable to make other important decisions, such as the decision to make a financial gift.

Appointed attorneys and deputies often don't have the power to make gifts out

of the money they're responsible for (however, there is usually some provision for modest gifting in a deputy order). Instead, an application would need to be made to the Court of Protection to do so.

The Court of Protection application process can be complex, whether it's for a statutory will or a financial gift, and applications can be contested if adequate evidence and information isn't provided.

Because of this, it's essential to seek the advice of an experienced Court of Protection lawyer to guide you through the process and ensure your application is correct.

A reliable and experienced Court of Protection lawyer can offer advice on the following throughout the process:

- The quality of evidence needed and reasoning for any gift
- Tax consequences and how to minimise these
- The best way of drawing up the will – when a trust will be needed, and when should they be avoided
- How to deal with challenges from other relatives or friends
- Whether there will be a court hearing, and if so, how to get the best outcome at this hearing

The Court takes breaches of the rules regarding statutory wills and gifts very seriously. Failing to follow carefully set out processes could result in a will that's later found to be invalid, or a deputy who's liable to pay the money back from any invalid gift out of their own pocket.

Because of this, it's always best to reach out to an experienced and specialist Court of Protection lawyer as soon as possible when considering a statutory will for a disabled loved one, or they're looking at making a financial gift.

## Handling disputes in the court of protection

Occasionally disputes arise relating to the finances or well-being of someone who lacks mental capacity. These disputes are dealt with in the Court of Protection, and the related proceedings can be complicated. The process requires detailed knowledge of the Court of Protection's practice and procedure, and it's always best to work with a legal expert.

Whether making an application to the Court that may cause a dispute within a family, or opposing an application that's not considered to be in the best interests of the individual concerned, working with an expert lawyer can help to negotiate an agreement or settlement and avoid the cost of the case going through the Court.

## Specialist employment law advice

Equality Act 2010 states that you can't be discriminated against because of any disability, whether it relates to a physical condition or to your mental health. However, according to recent research by The Chartered Management Institute (CMI), disabled workers still face notable barriers that stop them feeling welcome in the workplace, despite the clear benefits of disability inclusion.

If you've suffered from discrimination or unfair treatment of any kind at work due to your disability, or that of a loved one, then you could benefit from expert advice from a specialist employment lawyer. As well as ensuring that any unfair treatment by employers is properly handled, working with an employment expert can make the process of hiring a carer much easier, and can ensure that the correct steps are taken when acting as an employer.

## Unfair dismissal due to disability

If you think your employer has dismissed you unfairly because of a disability, you could be able to challenge their decision. The termination of your employment may be deemed as unfair dismissal if your employer can't prove that it falls under one or more of the categories set by the Employment Rights Act 1996.

For clarity on whether your dismissal was unfair, you'll need to review your

reasons for dismissal as stated by your employer. It's always best to speak to an employment law specialist who's experienced in working with disabled clients who've been mistreated at work. In most circumstances, you can usually only challenge the decision for dismissal if you've worked for the company for two years or more, however this isn't the case when the reason for dismissal involves disability.

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If you do work with an employment expert to take legal action, and the employment tribunal deems your dismissal unfair, the employer may be ordered to reinstate you or re-engage you within a different role in the business. Significant compensation may also be included depending on the case at hand.

While cases like these can seem obvious from the outset, they're often difficult to prove legally, making it key to choose a reliable and experienced employment solicitor who can work with you to achieve the best possible outcome.

## Discrimination at work due to disability

The Equality Act 2010 protects you from being discriminated against because of certain protected characteristics- one of which is disability. Despite this, many forms of discrimination against people with disabilities still take place in the workplace.

These can include:

- Offensive and derogatory comments, which are ignored or inadequately dealt with by your employer
- Unfair selection for redundancy because of a disability
- Failure by your employer to agree to a request for reasonable adjustments to be made to your workplace
- Failure by your employer to agree a request for flexible working
- Being subject to victimisation or less favourable treatment for having raised a complaints of discrimination

Disability discrimination at work can be both direct and indirect. Where you've been treated unfairly because you suffer from a disability compared to someone else who doesn't, this is direct discrimination.

Alternatively, when rules and regulations are put in place by an employer that apply to everyone equally but put people with a protected characteristic at a disadvantage, this is known as indirect discrimination at work. An example of indirect discrimination is when requests for flexible working are denied to all staff, putting disabled employees and carers of disabled relatives at a disadvantage.

If you've suffered discrimination of any kind at work due to disability, you should speak to a specialist employment solicitor as soon as possible to discuss your options.

## Failure to implement reasonable adjustments for a disability in the workplace

If you suffer from a disability of any kind, getting through the standard working day can be difficult.

When this is the case, you're entitled to ask your employer to make reasonable adjustments on your behalf.

These may be simple adjustments, such as allowing wheelchair users or visually impaired staff to vary their start and finish times to avoid having to use public transport during rush hour. Alternatively, it might involve allowing a phased return to work for people who've been off work with physical or mental health issues.

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Despite it being a legal right, there's no set rule for what constitutes a reasonable adjustment. Many adjustments are put in place following friendly and informal discussions between individual employees and their line managers about how to make work arrangements fairer. Where a GP or occupational health professionals issues a Fit Note or Statement of Fitness to Work, this will usually recommend reasonable adjustments to the employer that could help the employee.

Where workplace adaptations are recommended, your employer has a certain amount of discretion when it comes to deciding if they're reasonable or not. While this has now been superseded by the Equality Act 2010, their decision will often be based on factors taken from the Disability Discrimination Act 1995 (DDA), including:

- The extent to which an adjustment will improve the disadvantage
- The extent to which the adjustment is practicable
- The financial and other costs of making the adjustment, and the extent to which the step might disrupt the employer's activities
- The financial and other resources available to the employer
- The availability of external financial or other assistance
- The nature of the employer's activities and the size of the undertaking

As a result, while an adjustment such as the installation of a wheelchair ramp and disabled toilets would be a reasonable request to make of a large employer, it might be considered beyond the budget of a small business with only a few staff.

You should be able to make an initial request for reasonable adjustments directly to your employer, or through the HR department if there's one in place. However, if your request has been refused and you consider this to be unfair or discriminatory, it may be time to speak to an experienced employment lawyer.

## Victimisation after raising a complaint of discrimination at work

If you raise a complaint of disability discrimination with your employer, and they treat you less favourably for doing so, this could amount to victimisation under the Equality Act 2010. This detrimental treatment could include being overlooked for a promotion, denied a proposed pay rise, or even excluded from any meetings.

If you've experienced a form of victimisation, the first step is to submit an informal complaint by contacting your line manager in writing. If it's your manager who's victimising you, you can raise this to another person of authority in your organisation.

If this doesn't resolve the situation, you should review your workplace's

discrimination and victimisation policy, if they have one, to consult the process for making a victimisation complaint. If you choose to escalate the matter, you can raise a formal grievance to your employer, detailing your concerns and the

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*“We highly recommend seeking expert legal advice before submitting a formal complaint”*

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behaviour to which you have been subjected.

We highly recommend seeking expert legal advice before submitting a formal complaint to discuss how your claim could progress and which options you can take to ensure a better outcome.

## Discrimination at work as a parent of a disabled child

There are several important responsibilities that come with being the parent of a disabled child. If you've worked for the same employer for more than 26 weeks and are struggling to perform your current job role due to these extra responsibilities, you have a legal right to ask your employer to consider flexible working arrangements.

After receiving this application, your employer has three months to consider the request, or longer if you agree to extending this period. They can then either agree to the request and amend your contract of employment accordingly, or they can deny the request and respond explaining the reasons why.

As the parent of a disabled child, some of the types of flexible working you can ask for include:

- Job sharing- where two people share a job and split the hours between them, either equally or unequally
- Working from home- when it's possible for you to do some or all of your work away from your normal place of work
- Part-time- working less than full-time hours
- Compressed hours- working full-time hours every month but over fewer days
- Flexitime- enjoying flexibility over start and finish times, but working agreed 'core hours' and working to the usual total of hours in your contract

- Annualised hours- like flexitime, but with the hours worked spread over a full year
- Staggered hours- when you have different start, finish and break times from other workers
- Phased retirement- there's no longer a fixed retirement age, so this allows you to gradually reduce hours before full retirement

Even if your employer chooses not to accept your request, they must give reasonable consideration to requests for all of these flexible working practices, and give adequate reasoning for denying them. If those reasons are inadequate, you may be able to take your case to an employment tribunal with a specialist employment law solicitor.

## Why might a flexible working request be refused?

As previously stated, there's no legal obligation for your employer to grant a flexible working request, only for them to give it reasonable consideration and adequate reasoning in the event of a refusal.

Common reasons for refusal by employers include:

- Where flexible working may affect the quality and performance of your role
- Where you've applied to reduce your hours, but the employer doesn't believe you could do your job adequately in this time
- Where you've applied to work from home, but your employer believes you need to be able to interact with colleagues in order to fulfil your role effectively
- Where the business may not be able to meet customer demands
- Where you've applied for flexitime, but your role demands that you're at work during normal working hours, perhaps because of fixed shift patterns

Still, a refusal for a flexible working request doesn't have to be the end of the matter. If you believe that your request for flexible working has been refused unfairly, your employer should be prepared to sit down and discuss the situation with you, and you also have the right to appeal their decision.

Flexible working is a complex area of employment law which raises several



different legal issues.

Requests need to be considered on a case-by- case basis, and if you're struggling to reach an agreement with your employer about how to reach a solution, it's always best to seek the advice of an experienced employment law solicitor.

## Workplace harassment when living with a disability

While many people consider a certain amount of joking among co-workers to be reasonable, it's all too common for this to cross the line and turn into unpleasant bullying and harassment for those living with disabilities.

Examples of harassment in the workplace can include:

- Excessive criticism, particularly in front of others
- Being humiliated or demeaned in front of others
- Being unfairly excluded from team activities, meetings, and emails
- Constant teasing, verbal abuse, or innuendo
- Threats with regard to your job security

The legal definition of harassment under the Equality Act 2010 is: "Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual".

With disability being one of these protected characteristics, any discriminatory comments or actions could class as workplace harassment.

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*"jokes or comments about your disability don't have to be directed towards you in order to constitute harassment"*

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It's also important to remember that jokes or comments about your disability don't have to be directed towards you in order to constitute harassment. If they're made in the workplace, even accidentally, they could still count as harassment.

Once you've made an official complaint about harassment due to your disability,

your employer's obliged to investigate your complaint and make sure that steps are taken to end any identified harassment. If your employer's unwilling or unable to stop the bullying or harassment, you should seek advice from an experienced employment solicitor and consider taking legal action.

## What rights do carers have at work?

As someone who carries out the role of a carer for a disabled loved one, you're also protected under the Equality Act. This means that you can't be subjected to discrimination or harassment because of your caring responsibilities. As a carer, you're seen as legally 'associated' with the person you care for, offering you a level of legal protection.

If you've been refused a job because of your caring responsibilities, or been treated otherwise unfairly, this is classed as disability discrimination. For more information and advice on your options after experiencing discrimination at work as a carer, it's best to get in touch with an employment lawyer specialising in disability law as soon as possible.

## Importance of specialist legal advice when hiring a carer

Many parents of disabled children, or adults living alone with a disability, take the important step to hire a personal assistant or carer to help with daily tasks. This is key for many disabled people to allow them to live with a sense of independence and without having to rely on loved ones for help.

When you hire a carer on an employment contract, you become an employer and must ensure you meet employment law requirements.

There can be a lot to consider when you become an employer of a carer or personal assistant.

There may be several legal considerations which might require the assistance of an employment law expert.

These include:

- Carrying out the necessary right to work checks

- Drafting a legally sound employment contract
- Setting up a pension for your carer if necessary
- Ensuring pay scales are at least National Minimum Wage
- Running a payroll and calculating necessary tax deductions
- Providing adequate holiday and sick pay
- Providing adequate maternity or paternity leave

If you're struggling with any of the above or wish to ensure you've covered all bases in your employment contract, it's always advisable to seek advice from a specialist employment lawyer to prevent disputes further down the line.

## Family law advice

Living with a disability, or having a disabled loved one, can lead to unique and sometimes challenging family law needs. Disability can take many forms and affect people and their families in many different ways. Varying severity, independence, long term outlook, altered personality, capacity and cognition, and the varying provision of support available mean it's key that each family's circumstances are carefully considered and handled by a family lawyer with expertise in this area.

Families of those who've suffered brain injuries often report that they're living with "a new person" following their injury. It's unfortunately the case that the emotional, behavioural, physical, and cognitive effects of a brain injury or disability will often have an impact on existing and future relationships and family dynamics.

Following a life changing injury, the role of the spouse or partner can change as they take on the role of carer, and this can alter the boundaries in their relationships. This is unfortunately a common experience, and it often result in friction, unhappiness and sometimes relationship breakdown.

## Special considerations on finances for divorces involving disability

The decision to take steps towards a divorce is a difficult one for anybody to make.

However, the situation can be further complicated when one or both parties suffer from a disability, and there are various issues that need to be considered regarding divorce and disability.

For example, when one spouse has been the carer for their partner during the marriage, this can be a full-time responsibility leaving them unable to take on another job. In the event of divorce, many carers are left feeling worried about losing the money they receive for this role and being left with no income and financial uncertainty. Spousal support and disability can be complex, so it's always best to reach out to a divorce specialist as soon as possible if you're going through a situation involving these issues.

With all divorces, there's an assumption of an equal split of finances as a starting point, however, a disability can have a huge impact on the divorce proceedings and financial settlement.

If, as mentioned, one spouse has acted as the primary carer for the disabled party, then alternative provisions must be considered financially for both parties- whether this be help from statutory services, another family member, or paid professional help.

Because of the unanticipated complexities that living with disability can bring to divorce proceedings, it's important to seek specialist legal advice from a divorce lawyer experienced in handling divorces involving disability, and who's aware of the further considerations needed.

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## Child arrangements in a divorce

In any divorce proceedings, the needs and welfare of children comes first. A disabled parent may need additional support to take care of the children on their own, which adds further complexity to normal shared child arrangements.

If both parties can come to a practical agreement about where their children will live after the divorce, and the courts agree that the needs and welfare of children will be met under these circumstances, then this is the always best choice.

Where an agreement can't be reached, before applying to the family court, you must first attend a Mediation Information Assessment Meeting (MIAM). Once the avenue of mediation has been tried and if it's unsuccessful, you can then work with a family lawyer to seek a Child Arrangement Order in the family Court.

## Lack of capacity within the divorce process

When one party doesn't hold the mental capacity to agree to the divorce, or to be involved in the divorce process. This can be an issue where one party has a disability causing problems with cognition, memory, expression, and language, such as dementia or an acquired brain injury.

In such cases, an individual may require further assistance from a litigation friend.

A litigation friend is someone appointed by the Court to act on behalf of the spouse, and in their best interest. This could be a friend or family member, but they must be removed from the divorce proceedings and have no conflicting interests.

If there's any concern about whether someone has capacity to navigate through the divorce process, it's important that expert legal advice is taken before anything else. If nothing is done, and it's later established that one party didn't have the capacity to make certain decisions, these steps won't be valid.

Further, while a spouse suffering with a disability might have capacity to navigate through the divorce proceedings, personality changes might occur following a serious injury, and these need to be handled sympathetically. Examples of personality changes include disinhibition, impulsiveness, obsessive behaviour, poorly controlled emotions, and mood swings.

These changes need to be handled with sensitivity, and it's important to work with an experienced legal expert who can guide each party through the divorce proceedings at the right pace, and who's willing to offer a tailored service to meet their clients' unique needs.

## How are personal injury settlements handled in divorce?

Both married and unmarried individuals need to carefully consider the way in which any compensation is managed after a personal injury claim. If the funds

are to be held in a trust and managed for an individual, then careful consideration must be given to the way in which the trust is set up, who the beneficiaries are and how the funds are invested.

It's important to be aware that investing funds or purchasing property in the joint names of both parties of a marriage will "intermingle" the money, meaning that should the relationship breakdown in the future it's much more difficult for the injured individual to recover those funds as part of the financial settlement.

Because of the necessary considerations regarding finances, personal injury lawyers often work with family law experts to consider these issues from the outset of cases. Early intervention can benefit the injured individual in the future, should they experience a relationship breakdown or divorce.

## The importance of expert family law advice after a significant personal injury settlement

If an injured individual's recently received a significant sum of money in a successful injury settlement, it's key that they seek expert family law advice as soon as possible.

An individual who's already received their compensation, and is intending to get married, should consider entering into a prenuptial agreement to protect their compensation. This money is intended to compensate the injured party, meet their future care needs, and to provide an income over the injured person's lifetime, so it's key that it's protected.

If the individual is already married, they should consider a postnuptial agreement with a family law expert for the same reasons. As part of this, a detailed breakdown of the damages should always be obtained specifying what percentage of the damages were awarded for each element of the compensation, such as re-housing, adapting a home, care needs or loss of earnings.

This breakdown should always be made clear in any agreements so that each party is clear on what assets should be left outside the matrimonial pot for division in the event of divorce.

# Jargon Buster

**Attorney** - An individual appointed by someone who still has mental capacity to act on their behalf should they lose mental capacity.

**Beneficiary** - Someone who's named in the will and set to inherit an asset from it.

**Child Arrangement Order** - Where mediation is unsuccessful, a Child Arrangement Order can be applied for from the Court which sets out the living arrangements for children.

**Court of Protection** - The court set up to deal with decisions or actions taken under the Mental Capacity Act. It has jurisdiction over the property, financial affairs and personal welfare of individuals who lack the mental capacity to make decisions for themselves.

**Deputy** - Someone appointed to make decisions in the best interests of another person who has lost the mental capacity to act for themselves.

**Employment Tribunal** - An employment tribunal is a specialist employment court. Its processes and decisions are governed by the law and are legally binding.

**Family mediation** - An amicable alternative to the court process for separating couples, providing impartial support from a trained mediator. It aims to help you reach an agreement on family issues and child arrangements.

**Lasting Power of Attorney** - A legal document in which someone (the donor) gives another person (the attorney) the right to help them make decisions, or take decisions on their behalf should they lose capacity to do so.

**Litigation friend** - A litigation friend helps someone else claim compensation if they can't make a claim themselves. This could be a child under the age of 18, or an adult who doesn't have the mental capacity to manage their own affairs.

**Matrimonial pot** - All of a couple's assets on divorce, including everything acquired by either of them during the marriage.

**Prenuptial agreement** - A contract made between two parties before they marry which specifies an agreed settlement with regards to property and other assets, should the marriage breakdown.

**Reasonable adjustments** - Alterations to buildings, facilities, policies, or

procedures to mitigate disadvantages in the workplace for disabled employees.

**Statutory will** - A will written on behalf of someone who is unable to write their own will which must be approved by the Court of Protection.

**Trust** - A trust is a legal mechanism used to manage property, money, and investments on behalf of a beneficiary.

**Trustee** - The individual responsible for the proper management of all property and other assets owned by the trust for the benefit of a beneficiary. Unfair dismissal- Where an employee is dismissed from a job role without fair reason, or without the proper dismissal procedure being followed.

**Will** - A will determines how your assets are to be divided in the event of your death. It's a formal document that must comply with strict legal requirements concerning

### Acknowledgements

This information was written by:

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